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LEGISLATION

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CONTEMPT OF COURT ORDINANCE 2008

An Ordinance to amend the law relating to contempt of court and for related matters

P. D. DRAYCOTT
DEPUTY ADMINISTRATOR

14th April 2008

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1

Preliminary

1. Short Title

This Ordinance may be cited as the Contempt of Court Ordinance 2008.

2. Interpretation

(1) In this Ordinance -

“court” includes any tribunal or body exercising judicial powers but does not include a Service Court;

“Court Martial” means a court-martial constituted under a United Kingdom Service Act;

“publication” has the meaning given in section 4(1), and “publish” and “publisher” (except in sections 9 and 10) are to be construed accordingly;

“Service Court” means a Court Martial, a Service Civilian court or a Standing Civilian Court;

“Service Civilian Court” means a court established under section 277 of the United Kingdom Armed Forces Act 2006(a);

“Standing Civilian Court” means a court established under section 6 of the United Kingdom Armed Forces Act 1976(b);

“the strict liability rule” has the meaning given in section 3; and

“United Kingdom Service Act” means the United Kingdom Army Act 1955(c), Air Force Act 1955(d), Naval Discipline Act 1957(e), the Armed Forces Act 1976(f) and the Armed Forces Act 2006.

- (2) The Schedule applies for determining the times at which proceedings are to be treated as active for the purpose of this Ordinance.

Part 2

The strict liability rule

3. The strict liability rule

In this Ordinance “the strict liability rule” means the rule of law established by the common law of England (and as applied to the Areas under section 14) whereby conduct tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so may be treated as a contempt of court.

4. Limitation of scope of strict liability

- (1) The strict liability rule applies only in relation to publications, and for this purpose “publication” includes any speech, writing, broadcast or other communication in whatever form, which is addressed to the public at large or any section of the public.
- (2) The strict liability rule applies only to a publication—
 - (a) which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced; and
 - (b) if the proceedings in question are active at the time of the publication.

5. Defence of innocent publication or distribution

- (1) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that the legal proceedings in question are active.
- (2) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any matter to which the that rule applies if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.
- (3) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies on that person.

6. Contemporary reports of proceedings

- (1) Subject to subsection (2), a person is not guilty of contempt of court under the strict liability rule in respect of a contemporaneous report of legal proceedings held in public if the report is fair, accurate and published in good faith.
- (2) In any proceedings or in any pending or imminent proceedings, the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary.
- (3) If publication of a report is postponed in accordance with an order made under subsection (2), the later publication of it is to be treated as contemporaneous for the purpose of subsection (1) if it is published as soon as practicable after the order expires.

7. Discussion of public affairs

A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.

8. Consent required for institution of proceedings

Proceedings for contempt of court under the strict liability rule must not be started except by or with the consent of the Attorney General and Legal Adviser or on the motion of a court having jurisdiction to deal with it.

Part 3

Other aspects of law and procedure

9. Use of recording devices

- (1) Subject to subsection (4), it is a contempt of court –
 - (a) to use or attempt to use, in a court an instrument for recording sound, except with the permission of the court;
 - (b) to publish a recording of legal proceedings made by means of such an instrument, or a recording derived from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;
 - (c) to use such a recording in contravention of any conditions of permission granted under paragraph (a).
- (2) Permission under subsection (1)(a)—
 - (a) may be granted or refused at the discretion of the court, and if granted may be made subject to such conditions as the court thinks proper about the use of a recording made in accordance with the permission; and
 - (b) if permission has been granted the court may, at its discretion, withdraw or amend it either generally or in relation to any particular part of the proceedings.
- (3) Without prejudice to any other power to deal with an act of contempt under subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited must (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.
- (4) This section does not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings.
- (5) A person who contravenes this section commits an offence and is liable on conviction to those penalties specified in section 15.

10. Prohibition on taking photographs etc. in court

- (1) Except where the court otherwise directs either generally or specifically, it is a contempt of court—
 - (a) to take or attempt to take a photograph in a court;
 - (b) to take or attempt to take in a court a photograph, or with a view to publication make or attempt to make in any court a portrait, sketch or other image, of a relevant person;
 - (c) from any place to take or attempt to take a photograph of a relevant person while that person remains in a court;
 - (d) to publish any photograph, portrait, sketch or image taken or made in contravention of paragraph (a), (b) or (c) or any reproduction of such photograph, portrait, sketch or image.
- (2) A direction of the court under subsection (1) may—
 - (a) be made at the discretion of the court and may be made subject to such conditions as the court thinks proper about the use of any photograph, portrait, sketch or image made in accordance with the direction; and
 - (b) at the discretion of the court, be withdrawn or amended, either generally or in relation to any particular part of the proceedings.

- (3) For the purposes of this section –
 - (a) a photograph, portrait, sketch or image is deemed to be a photograph, portrait, sketch or image taken or made in court if it is taken or made in the court room or in the building or in the precincts of the building in which the court is sitting, or if it is a photograph, portrait, sketch or image taken or made of a relevant person while he is entering or leaving that court room or any such building or precincts;
 - (b) “photograph” includes a video or other moving image;
 - (c) “relevant person” means a judge, coroner or officer of the court, or an advocate, witness, police officer or litigant in any proceedings before the court, whether civil or criminal.
- (4) A person who contravenes this section commits an offence and is liable, on conviction to those penalties specified in section 15.

11. Sources of information

No court may require a person to disclose, nor is a person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or the security of the Areas or for the prevention of disorder or crime.

12. Publication of matters exempted from disclosure in court

In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

13. Power of the Resident Judge’s Court to deal with contempt of court

- (1) A Resident Judge’s Court has jurisdiction under this section to deal with a person (a “contemnor”) who—
 - (a) wilfully insults the judge or judges, or a witness before or officer of the court or a police officer, interpreter or advocate having business in the Resident Judge’s Court, during his or their sitting or attendance in that Court or in going to or returning from it; or
 - (b) wilfully interrupts the proceedings of the Resident Judge’s Court or otherwise misbehaves before it.
- (2) In any case referred to in subsection (1), the Resident Judge’s Court may do either or both of the following—
 - (a) order an officer of the court, or police officer, to detain the contemnor until the rising of that Court;
 - (b) commit the contemnor to custody for a specified period not exceeding three months or impose on him a fine not exceeding €8,000, or both.
- (3) The Resident Judge’s Court may at any time revoke an order of committal made under subsection (2) and, if the contemnor is in custody, order his discharge.
- (4) A fine imposed under subsection (2) is deemed, for the purposes of any Ordinance, to be a sum adjudged to be paid on conviction and any provision relating to the enforcement of such a sum applies accordingly.
- (5) An order under subsection (2) is deemed, for the purposes of any Ordinance conferring a right of appeal, to be a conviction or a sentence on conviction.

14. Application of English common law

- (1) Subject to the provisions of this Ordinance, the common law of England relating to offences of contempt of court applies in the Areas.
- (2) Nothing in Part 2—
 - (a) prejudices any defences available under the common law of England to a charge of contempt of court under the strict liability rule;

- (b) restricts liability for contempt of court arising under the common law of England in respect of conduct intended to impede or prejudice the administration of justice.

15. Power of the Senior Judges' Court to deal with contempt of court

- (1) Subject to subsections (2) to (4), the Senior Judges' Court has jurisdiction to punish for contempt of court, whether such contempt is a contempt of that court or of any other court of the Areas.
- (2) The Senior Judge's Court may commit a person who is guilty of a contempt of court to custody for a specified period not exceeding 2 years or impose a fine or both.
- (3) The Senior Judges' Court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.
- (4) A fine imposed under subsection (2) is deemed, for the purposes of any Ordinance, to be a sum adjudged to be paid on conviction and any provision relating to the enforcement of such a sum applies accordingly.
- (5) An order under this section is deemed, for the purposes of any Ordinance conferring a right of appeal, to be a conviction or to be a sentence on conviction.

16. Amendment of Criminal Legal Services Ordinance 2005

Section 3 of the Criminal Legal Services Ordinance 2005(g) is amended by inserting after subsection (1) –

- “(1A) Sections 5(1) and (2) do not apply when a person is liable to be dealt with—
- (a) by a Resident Judge's Court for an offence of contempt of court under section 13 of the Contempt of Court Ordinance 2008; or
 - (b) by a Senior Judge's Court for conduct of a nature described in section 13(1)(a) and (b) of the Contempt of Court Ordinance 2008.”.

17. Repeals

Sections 40 to 42 of the Courts Ordinance 1960(h) are repealed.

18. Commencement

This Ordinance comes into force on the day of its publication in the Gazette.

Schedule

(section 2(2))

Times when proceedings are active

Preliminary

1. In this Schedule –
 - “appellate proceedings” means proceedings on appeal from, or for the review of, the decision of a court in any proceedings;
 - “criminal proceedings” means proceedings against a person in respect of an offence not being appellate proceedings; and
 - “sentence” includes any order or decision consequent on conviction or finding of guilt which disposes of the case either absolutely or subject to future events.
2. Criminal, appellate and other proceedings are active within the meaning of section 4 at the times respectively prescribed by this Schedule.
3. If in any proceedings more than one of the steps described in the following paragraphs is taken, proceedings are active from the first of those steps.

Criminal proceedings

4. Subject to the following provisions of this Schedule, criminal proceedings are active from the relevant initial step specified in paragraph 5 until concluded as described in paragraph 6.
5. The initial steps of criminal proceedings are –
 - (a) arrest without warrant;
 - (b) the issue of a warrant for arrest;
 - (c) the issue of a summons to appear;
 - (d) the service of an indictment or other document specifying the charge.
6. Criminal proceedings are concluded –
 - (a) by acquittal or, as the case may be, by sentence;
 - (b) by any other verdict, finding, order or decision which puts an end to the proceedings;
 - (c) by discontinuance.
7. Proceedings are discontinued within the meaning of paragraph 6(c) –
 - (a) if the charge or summons is withdrawn or a nolle prosequi entered;
 - (b) in the case of proceedings commenced by arrest without warrant, if the person arrested is released, otherwise than on bail, without having been charged.
8. Without prejudice to paragraph 6(b), criminal proceedings cease to be active if an order is made under section 70 (insanity of accused) Criminal Procedure Ordinance(i), but become active again if they are later resumed.
9. Criminal proceedings against a person which become active on the issue of a warrant of arrest cease to be active at the end of the period of 12 months beginning with the date of the warrant unless the person has been arrested within that period, but become active again if the person is subsequently arrested.

Other proceedings at first instance

10. Proceedings other than criminal and appellate proceedings are active from the time when a date for the trial or hearing is fixed or, if no such arrangements are previously made, from the time the trial or hearing begins, until the proceedings are disposed of or withdrawn.

Appellate proceedings

11. Appellate proceedings are active from the time when they are commenced –
 - (a) by application for leave to appeal or apply for review, or by notice of such an application;
 - (b) by notice of appeal or of an application for review;
 - (c) by other originating process.
12. Appellate proceedings cease to be active when they are disposed of, abandoned, discontinued or withdrawn.
13. If, in appellate proceedings relating to criminal proceedings the court remits the case to the court below or orders a new trial, any further or new proceedings which result will be treated as active from the conclusion of the appellate proceedings.

Notes

- (a) 2006 c. 52.
- (b) 1976 c. 52.
- (c) 1955 c. 18.
- (d) 1955 c. 19.
- (e) 1957 c. 53.
- (f) 1976 c. 52.
- (g) Ordinance 17/05.
- (h) Ordinance 3/60.
- (i) Cap 155, Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).

(SBA/AG/2/CT/480)

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Contempt of Court Ordinance 2008 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The note needs to be read together with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance amends certain aspects of the law of contempt of court by repealing sections 40 to 42 of the Courts Ordinance 1960.

4. The Ordinance limits the scope of the “strict liability rule” in English common law whereby conduct may be treated as a contempt of court where it tends to interfere with the administration of justice, even though there is no intention to so interfere. The limits on the operation of the rule are set out in section 4 and in the Schedule.

5. A defence of innocent publication or distribution may be relied upon by a publisher or a distributor of publications who breaches the strict liability rule. The person who seeks to rely on the defence has the burden of proving that defence.

6. A person is not guilty of contempt of court if they publish a fair and accurate report of public legal proceedings. However, a Court may order that publication of any reports on the proceedings is postponed in order to avoid a substantial risk of prejudice to the administration of justice.

7. The Ordinance also prohibits taking audio and visual recordings of any kind in a court. This prohibition does not extend to recordings made for preparing official transcripts. Nor does it apply in circumstances that the Court directs that a visual recording is made (for example where one of the participants in a hearing takes part by a live television link and a recording is made of that link).

8. Section 13 specifies the power of the Resident Judge’s Court to deal with contempt in the face of the Court. The Resident Judge’s Court can deal summarily with such conduct. The Ordinance also prescribes the limits on the power of the Resident Judge’s Court.

9. Section 14 provides that English common law defences to a charge of contempt of court under the strict liability rule are also available in the Areas. Section 14 also provides that a person will be liable for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.

10. The provisions of the Criminal Legal Services Ordinance 2005 concerning legal aid apply to persons who may be dealt with by the Court under the provisions of the Ordinance. In cases where a person is to be dealt with for contempt in the face of the Court, the grant of legal aid will generally be automatic.